

STATE ETHICS COMMISSION BULLETIN

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Summer 2002

Beginning in the fall, the *Bulletin* will be distributed electronically via email. If you wish to continue receiving the *Bulletin*, please email your interest to ccarson@eth.state.ma.us

Budget Cuts Affecting Commission Services

On June 13, 2002, the Senate adopted a level-funded budget of \$1,414,608 for the State Ethics Commission for FY 03. The House had previously adopted a budget of \$1,265,221 for the Commission, a difference of \$149,387. As we go to press, the budgetary process has moved to the Joint Conference Committee.

The Commission's FY 02 budget was \$1,414,608, a reduction of \$58,942 from a "level funded" FY01 budget of \$1,473,550 and a reduction of substantially more than that from the perspective of a "maintenance" budget. In order to live within the FY 02 budget appropriation, the Commission had no choice but to reduce significantly its staff and administrative costs.

Since July 1, 2001, the Commission's staff has been reduced by 13.5%, from 25.75 to 22.25 positions. We have lost one and one-half support positions, one administrative position and one attorney from the legal division, which provides guidance and advice to legislators and other public officials throughout the Commonwealth. In addition, in February, the Commissioners themselves voted in to forgo their per diem for the balance of FY 02.

The Commission has significantly reduced the Commission's administrative

costs by eliminating staff training; canceling many of the Commission's law library subscriptions; reducing printing and postage through increased use of the Internet; and implementing a voluntary electronic filing system for SFI filers. Still, services have been curtailed. For example, requests for SFIs may take up to 48 hours to process. The backlog of and wait for written opinions have grown significantly.

Even if the Legislature supports a level-funded budget of \$1,414,608 for the Commission in FY 03, additional cuts will be made. If the Legislature supports a substantially reduced budget, the Commission will have no choice but to cut its staff.

Such a cut will substantially erode the Commission's ability to carry out its fundamental mission to advise, educate and enforce the conflict of interest and financial disclosure laws.

The City Solicitors and Town Counsel Association, the Massachusetts Municipal Association and the Massachusetts Association of School Committees have all recognized the importance of the services the Commission provides to municipal government and endorsed level funding for the Commission.

Ethics Primer: Officials Appearing Before Town Boards

Periodically, the Bulletin will discuss a particular area of the conflict of interest law. The information provided is educational in nature and should not be considered legal advice. Persons with questions about a specific situation should contact the Ethics Commission for free confidential advice.

Massachusetts General Law c. 268A, the state's conflict of interest law, governs the conduct of public officials. In general,

§17 of the conflict law prohibits a public official from acting as an agent for anyone other than the municipality for which he or she serves in connection with any matter in which the municipality is a party or has a direct and substantial interest even if the public official abstains from taking any offi-

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Inaugural Online Filing of Statements of Financial Interests Deemed a Success

The Ethics Commission's Financial Disclosure Division successfully completed its first year of filing Statements of Financial Interests online. 4,336 public employees were required to file financial disclosure forms by May 1, 2002 for calendar year 2001. 1,844, or 45%, voluntarily filed electronically. The majority who filed electronically indicated that the driving force behind their decision to file electronically was that it would be much easier in subsequent years. The online software program is designed to repopulate each year all fields of information previously submitted by a filer.

"We're extremely pleased with the results," said Chief Financial Officer Anne Marie Quinlivan, "Overall, feedback on electronic filing was very positive."

Executive Director Peter Sturges at-

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From the Executive Director

"Guidelines Considered in Imposing Penalties"

Last summer, the Commission re-endorsed general guidelines for considering allegations of violations of the conflict of interest and financial disclosure laws. The Commission has relied on these five fundamental guidelines since its inception almost 24 years ago to determine which violations are serious and warrant investigation and possible public resolution.

These guidelines are:

- (1) the willfulness of the activity;
- (2) the economic benefit to the subject or someone connected to him or her;
- (3) the economic harm to the government or an individual;
- (4) the use of undue influence; and
- (5) the impact on confidence in government.

The Commission uses these guidelines not as a checklist, but rather as a set of basic principles to help identify the best cases to pursue. No one guideline is dispositive, nor must all of the guidelines be met in any individual case.

The Commission also reviews additional relevant factors including judicial and Commission precedent, Commission resources, the educational and deterrent impact of a public or private resolution and various mitigating or exacerbating factors, such as a subject's cooperation or "self-reporting. Deciding which cases to pursue often times is more art than science, more judgment than formula. Above all, it is the Commission's responsibility to make choices that will lead to the timely and fair enforcement of the laws.

Peter Sturges

Commission Members Summer, 2002

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Editor

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tributed the success of the program to the two-member SFI staff's efforts. Filers were offered walk-in or telephone assistance if they wished to file electronically.

The switch to online filing resulted in one full-time employee completing the processing, data entry and filing for all forms; during prior filing seasons, three employees were required to complete these tasks. It also resulted in reduced printing and postage expenses.

Statements of Financial Interests are public records that are available upon the written request of any individual for public inspection and copying at the Commission's office, Room 619, One Ashburton Place, Boston. By regula-

tion, requests will be honored only if accompanied by proof of a requesting individual's identity. The statute requires the Commission to forward a copy of such request to the individual whose Statement has been examined.

Failure to file on time or to amend an inaccurate or incomplete statement within ten days of receipt of a formal late notice violates the financial disclosure law.

The Commission has adopted the following schedule of fines:

1-10 days late	\$ 50
11-20 days late	\$ 100
21-30 days late	\$ 200
31 or more days late:	\$ 500
Non-filing of an SFI	\$2,000

Fines for the repeated late submission of an SFI are double those above.

Ethics in the 21st Century: Changes Online

The Commission's website, now at www.mass.gov/ethics has a new look with new features. Visitors to the Commission's home page will be greeted with a user-friendly table for easier navigation.

New features that have been added include Frequently Asked Questions,

the Question of the Month and a PowerPoint training presentation used in Commission seminars. We hope to offer an interactive training module and the complete texts of Commission enforcement actions and advisory opinions for the past five years.

Town Counsel and City Solicitors May Provide Conflict of Interest Opinions

Individuals covered by G.L. c. 268A and G.L. c. 268B are entitled to receive confidential advice from the Ethics Commission about whether proposed activities are permissible under the laws. Most requests for advice are handled over the telephone on the day of the call. Written requests for advisory opinions are answered usually within six to eight weeks.

Opinions serve as a legal defense in subsequent proceedings concerning the requesting individual's conduct. Although advisory opinions issued by the Commission are confidential, the Commission publishes summaries of formal advisory opinions as well as public versions of such opinions with the identifying information deleted.

The conflict law also allows city solicitors or town counsel to provide

advice about what is permissible under the laws. Written opinions from municipal counsel are public records and must be filed with the Commission for review to ensure that these opinions are consistent with Commission precedent. The Commission has 30 days to notify the municipal counsel of any objections to an opinion; if there are no objections, the advisory opinion can serve as a legal defense in any subsequent Commission proceeding. A municipal counsel's opinion is legally binding only with respect to the person who requested the opinion, and is not binding if material facts were omitted or misstated by the requestor, if the opinion was not obtained in advance of the relevant action, or if the requestor otherwise acted in bad faith in securing the opinion.

Ethics Primer: Officials Appearing Before Town Boards

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cial action on this matter. It also prohibits a public official from requesting or receiving compensation in relation to any particular matter in which the same municipality is a party or has a direct and substantial interest. These provisions are intended to prevent divided loyalties.

Can a volunteer board member appear before the board on which he or she serves on behalf of private clients?

A public official, even one who serves as an unpaid volunteer on an appointed board is prohibited from acting as an agent for those clients for whom he or she provides consulting services before the board on which he or she serves. For example, a Historic Commission member who is an architect may not represent a client before the Historic Commission.

A public official always may, however, represent him or herself before his or her own board. For example, a conservation commissioner may seek an order of conditions in order to expand her home. She may not, however participate as a conservation commissioner in any determination or decision regarding her property.

Can a volunteer board member appear before town boards other than the one on which he serves?

If the board member is designated a "special municipal employee," he may act as an agent before municipal boards other than his own, provided that he has not officially participated in the matter and the matter is not now (and was not within the past year) within his official responsibility. He never may represent any third party before his own board or any board that falls under the jurisdiction of his own board. For example, a school committee member who is designated as a "special municipal employee" may appear on behalf of a client of his private law practice before the board of health. He may not appear, however, before the school committee or the school department regard-

ing a matter involving a client.

A board member whose position has not been designated "special" may not appear before **any** town boards.

What is a "special municipal employee"?

Several specific municipal positions are automatically designated as "special municipal employees" under the law. In other instances, the status of "special municipal employee" can be assigned to certain municipal positions by a vote of the board of selectmen, board of aldermen, town council or city council. Your position is eligible to be designated as a "special municipal employee" provided that

- (1) you are not paid; **or**
- (2) you hold a part-time position which allows you to work at another job during normal working hours; **or**
- (3) you were not paid for more than 800 working hours (approximately 20 weeks full-time or 15 hours or less per week part-time) during the preceding 365 days.

It is the municipal position that is designated as having "special municipal employee" status, not the individual and all employees holding the same office or position must have the same classification as "special municipal employees."

What activities are considered "acting as agent"?

An agent is anyone who represents another person or organization in dealings with the municipality. Almost any instance where you are acting on behalf of someone else can be considered "acting as an agent." For example, contacting or communicating with the municipality on another person's or group's be-

half, acting as a liaison with the municipality on another person's or group's behalf; providing documents to the municipality on another person's or group's behalf; or serving as a spokesperson before the municipality on another person's or group's behalf have been considered "acting as an agent."

When does a municipality have a direct and substantial interest in a matter?

A municipality has a direct and substantial interest in any matter pending before, under the official jurisdiction of, or involving action by a municipal agency, board, commission, authority or other body; in any effort to change mu-

nicipal regulations, policies or procedures; any contract, court case or other legal matter in which the city or town is a party, or any ruling or other action by a

"An agent is anyone who represents another person or organization in dealings with the municipality."

federal, county, regional or state agency involving matters which are subject to regulation by the municipality.

Are there any exceptions to these rules for public officials who are full-time employees and thus cannot be "special municipal employees"?

A municipal employee may apply for a building, electrical, wiring, plumbing, gas fitting or septic system permit on behalf of anyone and receive compensation in relation to that permit unless the municipal employee is employed by the permit granting department or an agency that regulates the activities of the permit granting department. For example a full-time firefighter could apply for an electrical permit from the building department but could not apply for an oil tank removal permit from the fire department.

There may be other exceptions which would apply to a particular situation. Please contact the Ethics Commission for advice at 617-727-0060.

Correction

The previous issue, which was the Spring 2002 issue of the Bulletin, should have been identified as Volume XXIV, Issue 1.

Recent Enforcement Matters

The Ethics Commission investigates numerous cases alleging violations of the conflict of interest and financial disclosure laws each year. While the Commission resolves most matters confidentially, it resolves certain cases publicly. Decisions and orders, disposition agreements and public enforcement letters are matters of public record once a case is concluded.

A decision and order concludes an adjudicatory proceeding or civil trial. The decision is a finding by the Commission that the law was or was not violated and the order determines the civil penalty or other remedy, if any. The Commission's decision may be appealed in Superior Court.

A disposition agreement is a voluntary written agreement entered into between the subject and the Commission in which the subject admits violating the law and generally agrees to pay a civil penalty.

A public enforcement letter (PEL) is issued where the Commission found reasonable cause to believe the law was violated but chose to resolve the case with a PEL because it believes the public interest would best be served by doing so. A PEL does not require the subject to admit violating the law and is issued publicly with the subject's consent.

The Commission does not comment on any matter under investigation, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential.

Decision and Order

In the Matter of Michael Jovanovic

— The Commission issued a Decision and Order concluding that Quincy resident Michael Jovanovic violated the state's conflict law by offering a bribe to a Department of Medical Assistance employee who was about to deny Jovanovic's application for financial assistance for his brother who was in a nursing home. The Commission ordered Jovanovic to pay the maximum civil penalty of \$2,000. According to the Decision and Order, Jovanovic's brother Zarko incurred a nursing home bill of more than \$40,000 in 2000. Jovanovic had power of attorney for Zarko. Around the time Zarko entered the nursing home, Jovanovic transferred approximately \$200,000 from a joint account he held with Zarko to accounts in only Jovanovic's name. Most of these funds, \$140,000, came from the sale of Zarko's home in 1997. In July 2000, Jovanovic applied on behalf of Zarko to the DMA for financial assistance. Under the MassHealth regulations, Zarko's eligibility would be de-

termined partly by the amount of money he had within the three years prior to his application and generally any assets exceeding \$2,000 would have to be used before Zarko would be eligible for state financial assistance. During summer 2000, Virginia M. Alger, a DMA eligibility worker assigned to Zarko's application, sought to acquire from Jovanovic all of the information concerning Zarko's financial status that was necessary to process his application. On September 12, 2000, Alger met with Jovanovic. At that meeting, Jovanovic did not provide all of the information needed and provided Alger with information about additional assets that had not previously been disclosed. After Alger explained that she was likely to deny the application and that Jovanovic could start the application process anew or appeal the denial, Jovanovic said, "No appeal." Alger explained that she could not process the application and Jovanovic again said, "No appeal." He then gave Alger a sealed envelope, stating "This is for you. You have done more for me than my lawyer has done." Alger handled the half-inch thick envelope and returned it to Jovanovic saying that she could not accept gifts, especially money. Jovanovic returned the envelope to her, responding, "This is not money." Alger tore open a corner of the envelope and saw a \$50 dollar bill. She gave the envelope back to Jovanovic, saying, "It is money. I cannot accept this." Alger ended the meeting and reported what had happened to her supervisor. The Commission found that Jovanovic's offer of cash in an

envelope violated §§2(a) and 3(a) of G.L. c. 268A, the conflict law.

Disposition Agreements

In the Matter of Omer Recore - The Commission fined Milford Police Sgt. Omer H. Recore, Jr. \$1,000 for violating the state's conflict of interest law by preparing a police report for a motor vehicle accident involving his wife. In a Disposition Agreement, Recore admitted that he violated G.L. c. 268A, §19 by preparing an official police report on December 6, 2000 for an automobile accident that took place on the previous day and involved his wife, Elaine Recore. The description of the accident in Recore's report contains several mitigating factors concerning the degree of Elaine's fault for the accident and did not indicate that Elaine was Recore's wife. Elaine's insurer determined that she was at fault for the accident and assessed a surcharge. Elaine's appeal of the finding of fault is pending with Division of Insurance. In 2002, the Milford Police Department assigned another officer to investigate the accident and to file a superseding report. The Agreement notes that the superseding report corroborates the report filed by Recore.

In the Matter of Ross Atstupenas - Blackstone Police Chief Ross A.

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SECTION BY SECTION: WHAT THE CONFLICT LAW SAYS

G.L. c. 268A

- Section 2(a) prohibits anyone from corruptly offering anything of value to any state employee with intent to influence any official act of such employee or to do or omit to do any act in violation of his or her lawful duty.
- Section 3(a) prohibits anyone from offering to a public employee anything of substantial value which is given for or because of an official act performed or to be performed by the public employee. Anything worth \$50 or more is considered to be "of substantial value" for purposes of the conflict law.
- Section 17(a) prohibits a municipal employee from receiving compensation from anyone other than the municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest.
- Section 19 generally prohibits a municipal employee from officially participating in matters in which the employee and/or certain others have a financial interest.
- Section 23(b)(2) prohibits a public employee from using his or her position to obtain for the employee or others an unwarranted privilege of substantial value not properly available to similarly situated individuals.
- Section 23(b)(3) prohibits a public employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his or her official duties.

Atstupenas admitted violating the conflict law by requesting that a subordinate officer change a \$75 speeding ticket issued to the brother of a fellow police officer to a warning. Atstupenas paid a civil penalty of \$1,000. According to the Disposition Agreement, Officer Bradley Briggs issued a \$75 speeding ticket to Steven Mowry, the brother of fellow police officer Wayne Mowry, on December 2, 2000. The same day Atstupenas sent Briggs an e-mail stating, "If at all possible could you change [the speeding citation] to a warning and notify Officer Mowry to let his brother know that it was changed to a written warning." The message was signed "Chief." Officer Briggs complied with Atstupenas' request. Atstupenas admitted that he violated G.L. c. 268A, §§23(b)(2) and 23(b)(3) by seeking to change the ticket to a warning.

In the Matter of Marge Schumm – The Commission fined Norton Housing Authority Executive Director Marge Schumm \$2,000 for violating the state's conflict law by participating in the hiring of her daughter's boyfriend as a maintenance mechanic. In a Disposition Agreement, Schumm admitted that she violated G.L. c. 268A, §23(b)(3) by delegating the hiring process to the maintenance foreman, reviewing the applications, informally discussing them with the foreman and advocating that her daughter's boyfriend be hired. Approximately 17 applicants sought the full-time job. Schumm's daughter's boyfriend was hired in January 2001. According to the Disposition Agreement, Schumm's disclosure that she stayed out of the process because she knew a couple of the applicants was "inaccurate and misleading" because Schumm failed to disclose her daughter's relationship with the successful applicant and her involvement in the hiring process.

In the Matter of Leon Halle – New Bedford Building Department Project Manager Leon Halle admitted violating the state's conflict law and paid a fine of \$2,000 and a civil forfeiture of \$350. According to the Agreement, Halle violated G.L. c. 268A, §17(a) by receiving compensation from a private developer in relation to plans that were submitted as part of the developer's building permit applications. Halle, in his private capacity as an engineer, prepared as-built foundation plans for properties located at 967 and 961 Kensington Street for a New Bedford developer in 1999 and 2000. Halle was paid \$175 for each plan. Prior to preparing the plans, the Ethics Com-

mission advised Halle that he could not receive compensation for work that would be submitted to the city.

In the Matter of Robert Hanna – Brimfield Highway Surveyor Robert Hanna admitted violating the conflict law by his actions in attempting to award Brimfield's 2002 winter sand contract to Hitchcock Contracting of Charlton, a company that had failed to submit a bid. Hanna paid a civil penalty of \$2,000. According to the Disposition Agreement, Hanna and the town procurement officer were present at the bid opening for the 2002 winter sand contract in May 2001. A bid from Lorusso Corporation, in the amount of \$9.95 per cubic yard, was the only one submitted. Hanna believed Lorusso Corporation's price was high. He subsequently travelled to Hitchcock Contracting of Charlton, which was the successful bidder for the 2001 winter sand contract but did not submit a bid for the 2002 contract, and obtained a bid for the 2002 contract. Hanna returned to Town Hall and told the procurement officer he had spoken with a Hitchcock Contracting employee who told him she taped the bid to the door of the police station, which was located in the basement of town hall and had its own entrance. Envelope in hand, he said to the procurement officer, "I found this taped to the door of the police station. What should we do about it?" The procurement officer refused to accept Hitchcock Contracting's bid because the bid opening had been completed. Hanna did not object but stated that the LoRusso Corporation bid was too high. Hanna admitted that he violated G.L. c. 268A, §23(b)(2) by using his position to attempt to circumvent the bidding process and by misrepresenting the facts surrounding Hitchcock Contracting's bid to the procurement officer. The town put the 2002 winter sand contract out to bid after it deemed that Lorusso Corporation's bid was high compared to recent years.

Public Enforcement Letters

In the Matter of Raymund Rogers – The Commission found reasonable cause to believe that West Bridgewater Police Lieutenant Raymund Rogers violated the state's conflict law by asking a subordinate to provide private transportation for Rogers' family members. The Commission concluded its review with the issuance of a Public Enforcement Letter. According to the letter, Rogers violated G.L. c. 268A, §23(b)(2) by asking a subordinate police employee

to perform personal errands on several occasions over an 18-month period involving private transportation for family members. These errands were performed on town time, using an unmarked police vehicle and took about 15 to 20 minutes each, for a distance of a few miles round trip. The letter states, "in the absence of a private family, business or social relationship with the subordinate, some history of reciprocity, or some other countervailing factor, it seems reasonable to infer that your subordinate did these personal favors for you because you, as his supervisor, asked him to." The letter also emphasized the personal errands were of substantial value, were performed "on the public payroll and [involved] the use of public vehicles" and were not justified by an emergency or otherwise authorized by a town ordinance or policy. Rogers intermingled his public and private dealings with a subordinate and, according to the letter, did not "make the relevant disclosure that would have kept the appearance problem from arising."

In the Matter of Marie Gosselin – The Commission found reasonable cause to believe Lawrence City Councilor Marie Gosselin violated the state's conflict law, by asking the Department of Public Works to remove construction debris from her rental property instead of paying a private contractor to do so and issued a Public Enforcement Letter. According to the letter, Gosselin violated G.L. c. 268A, §23(b)(2) by repeatedly asking DPW employees to remove construction debris left by a contractor doing work on a two-family rental property she owns. During Gosselin's first call, DPW staff informed Gosselin that it was the property owner's responsibility to dispose of construction debris. Under limited circumstances, none of which applied to Gosselin's situation, the DPW would dispose of such debris. After Gosselin persisted in three subsequent phone calls to the DPW foreman and superintendent to have the debris removed, the DPW removed the debris. After Gosselin was questioned about the matter by the media and the Ethics Commission, she paid \$262.50 to the DPW for its services in removing the debris. The letter states that high-ranking officials "must take care in requesting government services for themselves from the government employees they regulate to ensure that they do no explicitly or implicitly use their official position to obtain preferential treatment."

Commission Educational Seminar Calendar

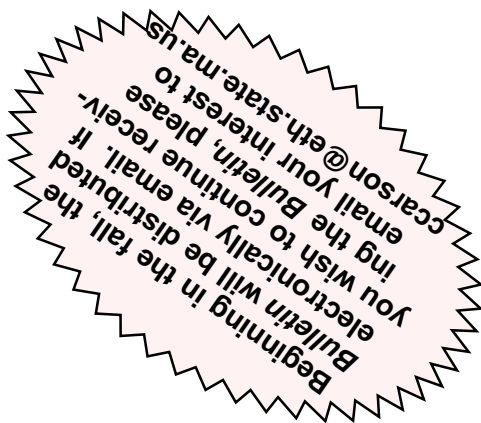
The Ethics Commission offers free educational seminars for municipalities, agencies and public groups. Currently there are a number of openings; requests for seminars are honored on a first come, first served basis. Please call the Commission at 617-727-0060 if your municipality, agency or group would like to organize and sponsor a seminar. The dates, times and locations of seminars listed below are subject to change. Please check with the host community or agency if you plan to attend.

Day	Time	Host/Location
July		
8	6:00 p.m.	Town of Canton, Town Hall, Canton
10	7:00 p.m.	Town of Ashby, Town Hall, Ashby
18	2:00 & 7:00 p.m.	Town of Buckland, Town Hall, Buckland
August		
20	10:00 a.m.	Mass. Collectors and Treasurers Association, UMass Amherst
22	9:00 a.m.	Mass. Certification Program for Procurement Officials, Boston
September		
9	1:30 & 7:00 p.m.	Town of Littleton, Town Hall, Littleton
26	9:00 a.m.	Mass. Certification Program for Procurement Officials, Taunton
26	3:00 & 6:30 p.m.	Town of West Boylston, Town Hall, West Boylston

Training Now Available at Ethics Commission Offices

The Communications and Public Education Division of the Ethics Commission is now offering educational seminars about the conflict of interest law at its Boston office, Room 619, One Ashburton Place. Beginning in September, Commission staff will offer free seminars presented by members of the Commission staff. This is a great opportunity for recently-hired public employees to learn about their obligations under the conflict of interest law.

Topics covered at these informative sessions will include restrictions on receiving gifts, contracting with the government, acting on matters in which family members or business associates have a financial interest, leaving public service to work for a company that contracts with the government, and avoiding appearances of conflicts of interest.



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